Concourse Rehabilitation and Nursing Center *and* Elizabeth Ferraro

Concourse Rehabilitation and Nursing Center *and* Faylena R. Champagnie

Concourse Rehabilitation and Nursing Center *and* Niketta C. Jordan. Cases 02–CA–222700, 02–CA–222701, and 02–CA–222702

December 29, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon charges filed by Elizabeth Ferraro, Faylena Champagnie, and Niketta Jordan on June 25, 2018, the General Counsel issued a consolidated complaint on November 30, 2018, against Concourse Rehabilitation and Nursing Center, alleging that it violated Section 8(a)(3) and (1) of the Act. On December 17, 2018, the Respondent filed an answer to the complaint.

Subsequently, the Respondent and the Charging Parties executed a bilateral informal settlement agreement, which was approved by the Regional Director for Region 2 on March 21, 2019.[1] Pursuant to the terms of the settlement agreement, the Respondent agreed, inter alia, to make Ferraro, Champagnie and Jordan whole by paying backpay in the amounts indicated therein. The Respondent also agreed to file a report with the Regional Director allocating the backpay amounts to the appropriate calendar quarters, sign and date the Notice and post it in English and Spanish for 60 consecutive days, and to "comply with all the terms and provisions of said Notice." The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaints previously issued on November 30, 2018 in the instant case. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated March 25, the Region's compliance officer sent the Respondent a copy of the conformed settlement agreement, with a cover letter explaining the remedial actions it was required to take in order to comply. Thereafter, by email dated April 29, the compliance officer sought evidence of the Respondent's compliance with the settlement agreement. Additionally, by letter dated May 6, the Region again sought compliance, advising the Respondent that default proceedings could be initiated if it failed to comply. On May 30, June 25, and July 18, the Region sent emails to the Respondent stating that it had yet to fully comply with the settlement and that failure to do so could result in default proceedings. In an email dated December 16, the Region advised the Respondent that it had yet to fully comply with the settlement as the Region had not received signed Notices or a completed Social Security Administration form showing allocation of backpay to the appropriate calendar quarters, as the settlement agreement required. On August 28, 2020, by email and letter, the compliance officer issued a final request that the Respondent fully comply with the terms of the settlement agreement, including the return of signed Notices in English and in Spanish, and a completed Social Security form. He further informed it that unless compliance was achieved within 14 days, he would recommend that the Regional Director revoke the agreement and reissue the complaint. The Respondent failed to comply. Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on October 28, 2020, the Regional Director reissued the complaint.

On October 30, 2020, the General Counsel filed a Motion for Default Judgment with the Board, requesting that the Board issue a Decision and Order against the

[1] Hereinafter, all dates are in 2019 unless otherwise indicated.

Respondent containing findings of fact and conclusions of law based on the allegations in the reissued complaint, and that the Board require the Respondent to "comply with the terms of the settlement agreement" and "grant[] such relief as may be just and proper to remedy the violations in the Reinstated Complaint."[2] On November 3, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to: (1) sign and date the Notice sent to the Respondent and provide proof of compliance; (2) file a report with the Regional Director for Region 2 allocating the backpay amounts to the appropriate calendar quarters; and (3) expunge from its files all reference to the suspensions of Ferraro, Champagnie, and Jordan and notify them in writing that the references have been removed and the suspensions will not be used against them in any way. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the Respondent's answer to the original complaint has been withdrawn and all of the allegations in the reissued complaint are true. Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a New York corporation with a facility and place of business at 1072 Grand Concourse, Bronx, New York, where it has been engaged in the operation of a nursing home. Annually, in the course and conduct of its business at the Grand Concourse facility, the Respondent derives gross revenues in excess of $100,000. Annually, in the course and conduct of its business at the Grand Concourse facility, the Respondent purchases and receives goods and materials valued in excess of $5000 directly from points outside of New York State.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that 1199SEIU, United Healthcare Workers East (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about June 7, 2018, the Respondent terminated the employment of Charging Parties Ferraro, Champagnie, and Jordan.

Since about June 7, 2018, the Respondent failed and refused to reinstate the Charging Parties to their former positions of employment until about June 20 or 27, 2018, when the Respondent converted the Charging Parties' terminations from employment to unpaid two-week suspensions.

The Respondent engaged in the conduct described above because Charging Parties Ferraro, Champagnie, and Jordan supported the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 2 on March 21, 2019, by signing, dating and posting the Notice to Employees incorporated into the settlement agreement, and filing a report with the Regional Director for Region 2 allocating the backpay awards to the appropriate calendar quarters.[3] In addition, we shall order

[2] We note that, in par. 16 of his motion, the General Counsel expressly states that "[s]ince entering into the Settlement, and since the Settlement was approved by the Regional Director, [the] Respondent has failed and refused to comply with certain affirmative obligations under the terms of the Settlement, despite its clear agreement to do so. *Specifically, [the] Respondent failed to comply with the requirement to: (1) sign and date Notices the Region sent to Respondent and provide proof of such compliance; and (2) file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters per the Settlement.*" (Emphasis added.)

As a result of this par., the General Counsel's motion appears to be limited to these two remedial requirements. Further, the motion does not contain any reference to the Respondent's failure to expunge all references to the discriminatees' suspensions from its files and notify the discriminatees that it has done so. Nevertheless, because of the general language contained in the motion, as cited above in the text, we use our remedial discretion to order the Respondent to remedy this breach of the settlement agreement as well.

[3] Although the settlement agreement itself requires the Respondent to file this report with the Regional Director, the incorporated Notice

the Respondent to remove from its files all references to the terminations and suspensions of Ferraro, Champagnie, and Jordan and to notify them in writing that this has been done and that the suspensions will not be used against them in any way.

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found as is appropriate to remedy such violations."[4] However, in his Motion for Default Judgment, the General Counsel has not sought such additional remedies, and we will not, sua sponte, include them.[5]

ORDER

The National Labor Relations Board orders that Respondent its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating or suspending employees because they support the Union and engage in concerted activities, and to discourage employees from engaging in these activities.

(b) Failing and refusing to reinstate employees to their former positions because they support the Union and engage in concerted activities, and to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files any reference to the unlawful terminations and suspensions of Elizabeth Ferraro, Faylena Champagnie, and Niketta Jordan, and within 3 days thereafter, notify the employees in writing that this has been done and that the unlawful terminations and suspensions will not be used against them in any way.

(b) Sign, date and immediately post at its facility in Bronx, New York, copies of the attached Notice to Employees that the parties agreed to post as part of the settlement agreement. The Notice marked "Appendix," shall be posted in the same manner as agreed to in the settlement agreement.

(c) File a report with the Regional Director for Region 2 allocating the backpay awards to the appropriate calendar quarters.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 29, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

states that the Respondent will file it with the Social Security Administration. The motion for default judgment also indicates that the report should be filed with the Social Security Administration, which was the Board's previous practice. However, in *AdvoServe of New Jersey*, 363 NLRB No. 143 (2016), the Board held that respondents should file these reports with the Regional Director of the appropriate NLRB region, rather than with the Social Security Administration. Accordingly, we have modified the Order and Notice to be consistent with current Board law.

[4] As set forth above, the settlement agreement provides that, in case of noncompliance, the Board may issue a full remedy.

[5] See, e.g., *Benchmark Mechanical, Inc*., 348 NLRB 576 (2006). The General Counsel specifically requested in his motion for default judgment that the Board "issue a decision containing findings of fact and conclusions of law based on, and in accordance with, the allegations of the Reinstated Complaint, remedying such unfair labor practices, including requiring the Respondent to comply with the terms of the Settlement, and granting such other relief as may be just and proper to remedy the violations described in the Reinstated Complaint." Motion at 5-6. We construe the General Counsel's motion as seeking enforcement of the unmet provisions of the settlement agreement.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT suspend or terminate you because you exercise your right to bring workplace issues and complaints to us on behalf of yourself and other employees.

WE WILL NOT suspend or terminate you because of your union support, participation, or membership.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL NOT do anything to interfere with your right to freely bring workplace concerns and complaints to us on behalf of yourself and other employees, including those related to wages, hours, and working conditions.

WE HAVE paid Faylena Champagnie, Elizabeth Ferraro, and Niketta Jordan for the wages and other benefits they lost because we terminated and suspended them.

WE WILL remove from our files all references to the terminations and suspensions of Faylena Champagnie, Elizabeth Ferraro, and Niketta Jordan and WE WILL notify them in writing that this has been done and that the terminations and suspensions will not be used against them in any way.

WE WILL file a report with the Regional Director for Region 2 allocating the backpay award to the appropriate calendar quarters.

CONCOURSE REHABILITATION AND NURSING CENTER, INC.

The Board's decision can be found at www.nlrb.gov/case/02-CA-222700 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.